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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

CASE NO. 79-6261

ORIGINAL COPY

JOEL JAFFER,)
Petitioner,)
vs.) MOTION TO DISMISS
RALPH G. ONGIE, etc.,)
Respondent.)
)

Respondents, CITY OF MIAMI and JAMES G. ROBERTSON, by and through their undersigned counsel, move this Court to dismiss the appeals filed in this cause, and for grounds therefor say:

1. The Petitioner has filed in the various courts, commencing in the Circuit Court, in the Eleventh Judicial Circuit, in and for Dade County, Florida, the Third District Court of Appeal of Florida, and the Supreme Court of the State of Florida, 21 cases. The causes of action in each of these cases have been filed in the name of Bayshore Alert Yes Committee, Joel Jaffer, Chairman, or abbreviations thereof. The effect of this type of filing is in essence to create a class action. As, according to the Articles of Association of the Bay Committee, there are listed 29 subscribers and their addresses, including Joel Jaffer. See Exhibit A. Joel Jaffer therefore is of counsel for these 29 members together with the so-called "class" that he allegedly represents, according to his pleadings.

2. The Florida Bar has furnished an Affidavit stating that Joel Jaffer is not a member thereof and therefore is not authorized to practice law in the State of Florida, nor in the Supreme Court of the United States. See Exhibit B. The appeals in this cause and the certiorari filed in this Court have been

in the name of Joel Jaffer, Chairman, Bay Committee, etc., et al.

3. The Clerk of the Supreme Court of the United States has re-designated both the appeal in this cause and the certiorari filed as Joel Jaffer, Petitioner. Therefore, his standing in this Court has been changed from that in which the cases were filed in all lower court proceedings.

4. This Court, in permitting Joel Jaffer to proceed as Chairman on behalf of the Bay Committee, will in effect authorize him to practice law, contrary to and in violation of (1) the Integrated Rule of the Florida Bar XVI, Unauthorized Practice of Law, and (2) the Florida Constitution Article V, Section 2(a) and (3), 454.23, Florida Statutes. See State v. Sperry, 140 So. 2d 587 (Fla. 1962), a copy is attached as Exhibit C. The Bay Committee is the real party in interest and Joel Jaffer is solely the attorney, which means that Joel Jaffer, Chairman, is in effect practicing law without a license not on behalf of himself, but on behalf of the Bay Committee, and is attempting to persuade the Court that this personum action is supported by the pleadings.

5. Joel Jaffer, in one of the cases presently before this Court, acting on behalf of the Bay Committee, has demanded $2,500.00 in exchange for his agreement to cease litigation in that particular matter, thus utilizing the Courts of the State of Florida and of the United States for pecuniary profit. See letter attached as Exhibit D.

6. The Lower Courts, in Case Numbers 57-786 and 57-787, were dismissed on October 1, 1979 by Order of the Supreme Court, a copy of the Orders are attached hereto as Exhibits E and F. Therefore, the Court lacks jurisdiction as

to these cases for failure to file within 90 days. United States Supreme Court Rules 10, 11 and 13.

7. The "Petitioner", JOEL JAFFER's manipulation of the Court system and his disdain for the Court is further reflected by a document he mailed to the City of Miami Law Department entitled "A Mathematical Approach to Frivolous Appeals". The parody of this document is that no matter how frivolous the appeal may be, the Courts cannot deem it so under his mathematical formula. See Exhibit G. In addition, the whim of the Petitioner is further reflected in the letterhead mailed to Assistant City Attorney G. Miriam Maer, in which he styles himself as "the grove gadfly", and a second letterhead in which he writes on the bottom thereof to Ms. Mikele Stander Carter, Assistant City Attorney, "A Pleading a day keeps the Sunshine Away". In both of the above letters there were pleadings involving litigation presently under consideration by this Court. See Exhibit H.

8. The Petitioner has filed a motion to proceed in forma pauperis. Predicated upon Paragraph 1 hereof, JOEL JAFFER, in all the proceedings in the Lower Courts, has designated the style of the case as "Bayshore Alert Yes Committee, Joel Jaffer Chairman". In his motion presently before the Court, he further recites in Paragraph 3, "motion to represent class are affirmed". It is apparent that JOEL JAFFER is not proceeding in the cases presently on appeal individually, but rather as the representative of a class. The record is devoid of any allegations or affidavits that the so-called class he represents, or the members of the so-called Bayshore Alert Yes Committee, are without funds to pay the cost of this appeal. The Courts have held in similar situations that costs would not be waived. S.O.U.P., Inc. v.

The Federal Trade Commission, 449 F.2d 1142, U.S.App. D.C. 1971. Copy is attached as Exhibit I. The Courts of the State of Florida have held that forma pauperis proceedings will not be permitted in an appeal unless authorized by Statute, that in the State of Florida there are no statutory provisions providing for forma pauperis waiver of fees in appellate proceedings. See Hillman v. Federal National Mortgage Association, 375 So. 2d 336 (4th DCA 1979). Copy is attached as Exhibit J. The Respondent submitted a motion in opposition to the Bay Committee's forma pauperis before the Supreme Court of the State of Florida prior to the Petitioner's appeal being dismissed.

9. The Court will note in Paragraph 1, supra, that there has been a total of 21 cases filed. Hearings were afforded the Petitioner in the Lower Circuit Courts. Therefore, he has not been denied, nor has the Bay Committee been denied, their day in Court. Will a non-lawyer be permitted to bring a class action and plead poverity without formal affidavits from the members of the association he allegedly represents? See S.O.U.P., Inc. v. Federal Trade Commission, supra. The Florida Courts have held that excess amount of litigation is contrary to public policy and should be enjoined. Shotkin v. Cohen, 163 So. 2d 330 (Fla. 3d DCA 1964). A copy is attached as Exhibit K. To have 21 cases presently pending before this Court certainly smacks of excessiveness.

10. The Petitioner in his Brief leads the Court to believe that he has a pecuniary interest or a direct property right to the property involved in the proceedings before either the City Commission or the Lower Court. This allegation

is erroneous as the Bay Committee has no interest other than as a member of the public at large. Therefore, they are not being deprived of any "property right".

11. The Petitioner has not raised a Federal question in any of the cases presently pending before this Court in the initial pleadings in the Circuit Courts from which these appeals have been taken.

Respectfully submitted,

JACK R. RICE, JR.
Attorney for DR. JAMES ROBERTSON
P. O. Box 350838
Miami, Florida 33135

GEORGE F. KNOX, JR., City Attorney
MIKELE S. CARTER, Asst. City Attorney
Attorneys for CITY OF MIAMI
174 East Flagler Street
Miami, Florida 33131

By _____
MIKELE S. CARTER, Asst. City Attorney

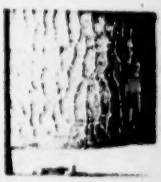

Exhibit A

ARTICLES of ASSOCIATION
of the
B.A.Y. COMMITTEE

We, the Undersigned, in order to afford for ourselves better representation, recognition and protection, do subscribe to these Articles of Association.

Article One

1. The name of this association is the Bayshore Alert : YES (B.A.Y.) Committee and its principle place of business will be at 3268 Mary St., Coconut Grove, Fl. 33133

2. The prevailing purpose of this association shall be to provide for its members and all citizens direct participation in the development, if any, of Miami's bayshore, and to preserve and protect the property values, natural and historic features, and character of the neighborhoods of its members.

3. The association will exist perpetually unless unanimously dissolved by its members pursuant to by-laws adopted in addition to these articles.

4. Amendments or by-laws to these articles may be adopted to these articles by a direct vote of 2/3 of the members, at a general meeting or by proxy.

5. The association will be voluntary in nature.

Article Two

1. The Board of Directors of the association will consist of a

Chairman, a Legal Representative and a Business Representative. The latter two will perform as Secretary and Treasurer, respectively, within the association.

2. The name and post office address of the first board of directors is as follows: Joel Jaffer 3268 Mary St., Coconut Grove, Fl. 33133 This board shall perform the duties of the board and represent the association prior to, and shall arrange for and preside over the first general meeting of the association.

3. The association shall, at its first and subsequent general meetings, delegate authority and responsibility to the board or any person or group of persons within the association as it sees fit, and shall provide for subsequent meetings.

4. The association shall make decisions by consensus.

Article Three

1. The Legal Representative shall de facto represent and be a resident agent for the association as a legal entity, when applicable by statute or practice; or shall act as a class representative for the individual members of the association.

2. A group of members of the association may arrange for the support of the entire association in so far as their concerns and interests are presented to the board of directors in a written subscription. If the legal representative is not able to represent the group, the board may arrange for an assistant legal representative within the group, or retain outside counsel for the group.

3. A member of the association acting within his rights or duties of and for the association shall not be held personally liable for his actions in a court of equity.

IN SUBSCRIPTION TO these articles, we set upon these articles our hands and seals:

Jack S Jaffen

Alan M. Hathaway

Joel Stillman
2915 Tigertail Ave.
Coconut Grove, Fl. 33133

John Lutzow
2639 Tigertail - Coconut Grove FL.

Jon Lloyd
1815 Dechee Dr-Coconut Grove

J. F. Miller
2310 Tigertail Ct.,

James L. Gray
2517 Andra Ave., 33123.

Mrs R.J. Smith
3201 Kirk St.

David DuBois
2340 Tigertail

Carl C Pa...
2343 Tigertail ...

3268 Mary St. Coconut Grove, FL 33133

3268 Mary St, Miami, 33...

Margaret & Dr. Bois
2348 Tigertail ...

Jean W. Skaggs
3221 Calusa

Florence B Ellig
3211 Calusa St

Allan Hubler
ALLAN HUBLER
2421 TIGERTAIL AVE.

Jean M. Kaus
2451 TIGERTAIL AVE.

DJ. TRACHTENBERG
2501 Tigertail

Richard T. Sch...
3401 So Bayshore Dr.

IN SUBSCRIPTION TO these articles, we set upon these articles our hands and seals:

3041 Oak Ave, Coconut Grove

3021 Oak Ave

Carol Penney
3372 Virginia St.

3368 Mary St.

3268 MARY ST.

3268 Mary St. Apt. 2

3268 Mary St. Apt. 2

88 Mary Street #1

2901 S. Bayshore Dr #9G

2901 S. Bayshore Dr.

2901 S. Bayshore Dr.

3134 Virginia St.

State of Florida)
) ss.
County of Dade)

BE IT REMEMBERED that on this day personally appeared before me, the undersigned notary public in and for this State of Florida at large, duly authorized to take oaths and administer acknowledgements,

JOEL S. JAFFER,

witness and party to the foregoing Articles of Association, and, after positively proving his identification as such, has sworn and deposed that the subscriptions attached thereto were made in his presence, and are the authentic and genuine signatures and addresses of those persons whom they purport to be, and has acknowledged the same Articles to be the act and deed of such signers, that the facts therein stated are truly set forth, and attests to such declaration with his seal.

(Seal) Joel S. Jaffer
JOEL S. JAFFER

WITNESS my hand and official seal at Miami, said County and State, this 7 day of May, A.D., 1979.

Joanne M. Brown
NOTARY PUBLIC, State of Florida at Large

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 14 1980
BONDED THRU GENERAL INS. UNDERWRITERS

Exhibit B

AFFIDAVIT

STATE OF FLORIDA)

COUNTY OF LEON)

Before me, this day, personally appeared VIRGINIA L. HARDISON, who being duly sworn deposes and says:

I, VIRGINIA L. HARDISON, am director of the Membership Records Department of The Florida Bar in Tallahassee, Florida, with responsibility to handle the membership records in this department. The records of The Florida Bar reflect that Joel Jaffer is not a member of this Bar.

Virginia L. Hardison
VIRGINIA L. HARDISON

SWORN TO AND SUBSCRIBED BEFORE ME
this 14th day of November, 1979.

Charlotte E. Bragdon
Notary Public
My Commission expires: _____

STATE OF FLORIDA
COUNTY OF LEON

I, the undersigned authority, hereby certify that the foregoing is a true and correct copy of the instrument presented to me by Virginia L. Hardison as the original of such instrument.

WITNESS my hand and official seal, this 15th day of November, A.D. 1979.

Charlotte E. Bragdon
Notary Public
State of Florida at Large

My commission expires:

EXHIBIT B

Supreme Court of Florida

WEDNESDAY, OCTOBER 31, 1979

JOEL JAFFER,	**	
Appellant,	**	CASE NO. 57,786
vs.	**	
		DCA CASE NO. 79-859
RALPH G. ONGIE, ETC.,	**	
Appellee.	**	

On consideration of the motion to reinstate timeliness filed by appellant,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

C
cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Cler
with copy for Circuit Judg

Mr. Joel Jaffer
Hon. Jim Smith

EXHIBIT E

Supreme Court of Florida

WEDNESDAY, OCTOBER 31, 1979

JOEL JAFFER,	**	
Petitioner,	**	CASE NO. 57,787
vs.	**	
RALPH G. ONGIE, ETC.,	**	DCA Case No. 79-859
Respondent.	**	

On consideration of the motion to reinstate timeliness filed by petitioner,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: [signature]
Deputy Clerk

C
cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
with copy for Circuit Judge

Mr. Joel Jaffer
Hon. Jim Smith

EXHIBIT F